

-DOCKET FILE COPY ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Eagle Telephone System, Inc.

and

Midvale Telephone Exchange,
Incorporated

Joint Petition for Waiver of the definition of
"Study Area" of the Appendix-Glossary of
Part 36 of the Commission's Rules

US BANK/FCC OCT 29 2008

CC Docket No. 96-45

To: Chief, Wireline Competition Bureau

JOINT PETITION FOR EXPEDITED WAIVER

Pursuant to Section 1.3 of the Federal Communication Commission's ("FCC" or "Commission") Rules,¹ Eagle Telephone System, Inc. ("Eagle") and Midvale Telephone Exchange, Incorporated ("Midvale") (together, "Petitioners"), by and through their counsel, request a waiver of the definition of "study area" contained in the Appendix-Glossary of Part 36 of the Commission's Rules.

Petitioners request this waiver to reflect the service offered by Eagle in the Conner Creek area located in northeast Oregon and a small portion of Idaho ("Conner Creek"). This area was originally within Midvale's Idaho study area and Petitioners request that the territory be removed from Midvale's study area in Idaho and recognized as part of Eagle's Oregon study area. Exhibit 1, attached hereto, identifies the area to be

¹ 47 C.F.R. § 1.3.

COPY

No. of Copies rec'd 2
List ABCDE

served by Eagle. Most of the customers in the area reside in Oregon. There is currently one customer in Idaho.

Petitioners request that this Petition be reviewed and approved expeditiously. Of even date, Midvale has filed to discontinue providing service in the Conner Creek area. In accordance with Section 63.71(c) of the Commission's rules, Midvale's application will be deemed to be automatically granted on the sixtieth day after the release date of the Public Notice.

INTRODUCTION

Midvale is a rural local exchange carrier operating in Oregon and Idaho. It is a rate of return carrier and, as of June 30, 2008, it serves 247 working loops in two exchanges in Oregon and 1,102 working loops in Idaho. The study area in question is referred to by the Universal Service Administrative Company ("USAC") as study area code 472226. Midvale will continue to provide local service within the other Oregon and Idaho areas it serves and will retain its study areas for those exchanges.

Eagle is a rural telephone company providing service within the Richland exchange in the State of Oregon. It has a study area which has been referred to by USAC as study area code 532369. As of December 31, 2007, Eagle has 445 working loops located in the Richland exchange in the State of Oregon. Eagle is classified as a rural telephone company and is an eligible telecommunications carrier under the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the "Act"). Eagle receives federal Universal Service Fund ("USF") support as a "cost company," not a "price cap company."

As will be discussed below in more detail, the factors that the Commission requires for a study area waiver are, or will be, all present in this case: (1) the public interest will be served by approving the waiver; (2) the Oregon Public Utility Commission ("OPUC") supports the transfer of territory; and (3) the inclusion of the Conner Creek area within the Eagle study area will not adversely impact the USF. Thus, the facts and circumstances supporting approval are similar in material respects to those involved in waiver requests that have been approved recently.²

WAIVER OF THE FROZEN STUDY AREA DEFINITION IS WARRANTED

Petitioners seek a waiver of the frozen study area definition. Part 36 of the Commission's Rules "freezes" the definition of "study area" to the boundaries that were in existence on November 15, 1984. Although the rule was adopted to prevent a carrier from segregating territories artificially to maximize high-cost support,³ the Commission has recognized that changes "that result from the purchase or sale of exchanges in arms-length transactions" do not necessarily raise the concerns which prompted the freeze.⁴

The Commission has recognized that failure to waive the rule in the case of the sale of exchanges would produce an absurd result, forcing the seller to continue to include exchanges in its study area for which it has no costs, and preventing the buyer

² See, e.g., *In the Matter of Dickey Rural Telephone Cooperative, et al. And Citizens Telecommunications Company of North Dakota, Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36, Appendix-Glossary of the Commission's Rules, Petition for Waiver of Sections 61.41(c) and (d), 69.3(e)(11) and 69.605(c)*, Order, 17 FCC Rcd 16881 (Wir. Comp. Bur. 2002); *In the Matter of Petition for Waivers Filed by Baltic Telecom Cooperative, Inc., et al., Concerning Sections 69.3(e)(11), 69.3(i)(4), 69.605(c) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 12 FCC Rcd 2433 (Acc. Aud. Div. 1997).

³ See *MTS and WATS Market Structure, Amendment of Part 67 of the Rules and Establishment of a Joint Board*, Recommended Decision & Order, 57 RR 2d 267, ¶ 65 (1984).

⁴ See, e.g., *Alltel Corporation Petition for Waiver of Section 36.125(f), Sections 36.154(e)(1) and (2), and the Definition of "Study Area" contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 5 FCC Rcd 7505, ¶ 7 (Com. Car. Bur. 1990).

from including in its study area exchanges it actually serves.⁵ Such a result would not serve the Commission's policy objective of ensuring that carriers' actual costs are reflected in their accounting so that they can accurately set just, reasonable, and non-discriminatory rates. In this case, the area to be transferred will be transferred for minimal compensation of \$30,000 to Midvale since Eagle will need to bring new facilities to the area. The waiver sought herein will conform the Commission's policy objectives to the operational facts on the ground.

A. Granting the Waiver Is in the Public Interest.

Eagle is a rural telephone company providing service to what are largely residential and farming communities in the eastern Oregon County of Baker, along the Snake River which forms the boundary between Oregon and Idaho at that point. The Conner Creek area is located adjacent to Eagle's existing service area in northeast Oregon and extends into Idaho. Midvale began providing service to the area some time ago. However, service is proving to be difficult to maintain given the distance from Midvale's other operations to this remote area of northeast Oregon. A service call requires a trip of approximately three hours each way. Because of this distance, Eagle has begun to handle trouble reports on behalf of Midvale. The Richland exchange served by Eagle is adjacent to this area. The Oregon Public Utility Commission ("OPUC") has recently authorized Eagle to include the Conner Creek area as part of the Richland exchange.⁶ Thus, the transfer of territory has been approved by the OPUC.

⁵ *Amendment to Part 36 to the Commission's rules and Establishment of a Joint Board*, Notice of Proposed Rulemaking, 5 FCC Rcd 5974, 5975-76 (1990) ("*Part 36 NPRM*").

⁶ *In the Matter of Eagle Telephone System, Inc., and Midvale Telephone Exchange Application for the Unallocation, Transfer and Allocation of Certain Territory*, UA 114, Order, Order No. 08-404 (entered August 2, 2008). Copy attached as Exhibit 2.

No facilities are to be transferred from Midvale to Eagle. Eagle has built or is building new facilities throughout the area. The new facilities will provide an increased level of service to the customers in the area, fewer outages and will allow the customers to receive advanced services for the very first time, including access to broadband services. Allowing this area to be in the Eagle study area will mean that state-of-the-art service options will be available to subscribers.

There are approximately 22 homes in the Conner Creek area. It is estimated that in five years, there will be approximately 50 customers in the Conner Creek area.

B. The OPUC Supports the Transfer of Territory.

As noted above, the OPUC supports the service area inclusion for Eagle by finding that it is in the public interest for Eagle to serve the area. Eagle has filed and the OPUC has approved amendments to Eagle's exchange maps to add the Conner Creek area to the Richland exchange served by Eagle. Midvale had not filed exchange maps related to the Conner Creek area with the OPUC in the past, so no revision to its maps was necessary.

C. The Change in Study Area Boundaries Will Not Adversely Affect the Universal Service Fund.

To evaluate whether a study area boundary change adversely impacts the USF, the Commission analyzes whether a study area waiver will result in an annual aggregate shift in high-cost support in an amount greater than one percent of the total high-cost support fund for the year.⁷ The transfer of the Conner Creek area to Eagle will not produce an adverse impact on the USF.

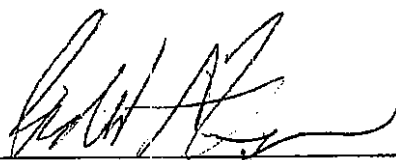
⁷ See, e.g. *US WEST Communications, Inc., and Eagle Telecommunications, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1774, ¶ 14 (1995) ("Eagle Order"); *Norway Order*, ¶ 9.

Midvale currently serves 22 working loops in the Conner Creek area and receives USF support for that area in the amount of \$83.17 per loop per month. The support per loop for Eagle in the Richland exchange on a per working loop basis today is \$131.07 per month. This means that if Eagle serves all 22 homes, it will receive USF support for those working loops in the amount of \$2,883.54 per month. Given that USAC's projections show annual high-cost support exceeding \$4,676,951,732.00, this transaction is a non-event for purposes of the USF.⁸

CONCLUSION

The study area waiver and modification sought herein is a necessary step in order to fulfill the policies for universal service. The immediate request is directly analogous to comparable requests routinely granted by the Commission. Therefore, good cause having been shown, Petitioners respectfully request that this Joint Petition be granted on an expedited basis.

DATED this 27th day of October, 2008.


Richard A. Finnigan
Attorney for Eagle Telephone System, Inc. and
Midvale Telephone Exchange, Incorporated
2112 Black Lake Blvd SW
Olympia, WA 98512
(360) 956-7001

⁸ All data is from USAC reports HC01 and HC05 for 2008, Fourth Quarter Projections. The reports may be viewed by going to <http://www.universalservice.org/about/governance/fcc-filings/2008> and then following the appropriate tabs.

EXHIBIT 1

In the State of Oregon:

Beginning where the Snake River serves as the border between Oregon and Idaho crosses the northern section line of Section 19, Township 11 South, Range 46 East, W.M., as the True Point of Beginning; thence proceeding westerly along the said Northern section line in a westerly direction to the Northwest corner of Section 24, Township 11 South, Range 45 East; thence South along the Western section line of said Section 24 to the Southeast corner of Section 35, Township 11 South, Range 45 East, W.M.; thence West along the Southern section line of said Section 35 to the Northwest corner of Section 4, Township 12 South, Range 45 East; thence South along the Western section line of said Section 4 to the Southeast corner of Section 20, Township 12 South, Range 45 East; thence West along the Southern section line of said Section 20 to the Southwest corner of said Section 20; thence South along the Western section line of Section 29, Township 12 South, Range 45 East, W.M.; thence continuing South to the Southwest corner of Section 5, Township 13 South, Range 45 East; thence along the Southern section line of said Section 5 to the point where the Snake River forming the boundary between the States of Idaho and Oregon crosses the Southern line of Section 4, Township 13 South, Range 45 East, W.M.; thence northeasterly along the midpoint of the Snake River as it exists in September of 2008, forming the boundary between the States of Oregon and Idaho, to the True Point of Beginning, Baker County, Oregon.

In the State of Idaho:

Beginning at the point that the Snake River crosses the southerly section line of Section 14, Township 14 North, Range 7 West, B.M., in the State of Idaho, County of Washington, as the True Point of Beginning; thence proceeding East to the Southeast corner of Section 13, Township 14 North, Range 7 West, B.M.; thence proceeding North along the East section line of said Section 13 to the Northeast corner of Section 1, Township 14 North, Range 7 West, B.M.; thence West along the North section line of said Section 1 to the point that the Snake River crosses said section line; thence following the midline of the Snake River as it exists as of September of 2008 and forms the border between the States of Oregon and Idaho southwesterly to the True Point of Beginning, Washington County, Idaho.

EXHIBIT 2

ENTERED 08/02/08

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UA 114

In the Matter of)	
)	
EAGLE TELEPHONE SYSTEM, INC.,)	
AND MIDVALE TELEPHONE)	ORDER
EXCHANGE)	
)	
Application for the Unallocation, Transfer)	
and Allocation of Certain Territory.)	

DISPOSITION: APPLICATION APPROVED

On November 5, 2007, Eagle Telephone System, Inc. (Eagle), and Midvale Telephone Exchange (Midvale) submitted a joint application requesting that the Public Utility Commission of Oregon (Commission) formally allocate to Eagle a geographic area, Conner Creek, currently being served by Midvale. According to the parties, Midvale recently sold its interest in the physical plant serving Conner Creek customers to Eagle. Pending Commission approval, the parties have also agreed to transfer all service obligations to Eagle as soon as practicable. Eagle, which currently serves customers in the neighboring Richland local exchange telecommunications service territory, would extend its services southward, uniting the two regions.

The area in question lies west of the Snake River along Oregon's border with Idaho. Because of its geographic remoteness from Oregon telecommunications infrastructure, Conner Creek customers have been served by Midvale pursuant to the terms of its Idaho tariff by means of an extension of its Idaho facilities.

Conner Creek was never designated as Midvale's service territory through a Commission-approved territorial allocation, and is therefore considered unallocated territory. In its report, attached as Appendix A and included by reference, the Commission's Staff recommends approval of both the submitted map and the requested allocation to Eagle.

The 2005 Legislature changed Oregon's territorial allocation law for telecommunications utilities and telecommunications cooperatives. The new law allocates local exchange telecommunications service territory as a geographic area within boundaries set forth in exchange maps filed with and approved by the Commission, replacing the old "metes and bounds" descriptions.

In relevant part, Oregon Laws 2005, Chapter 232, Section 27(2), *compiled as a note after* ORS 759.500, requires the Commission to:

Upon request, allocate every local exchange telecommunications service territory that is shown on a map approved by the commission and that is unallocated as of December 31, 2005, to the telecommunications utility, cooperative corporation or municipality that filed the map.

The joint application and accompanying map constitute such a request, compelling a Commission response.

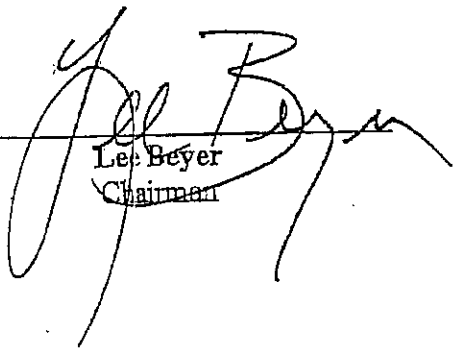
The Commission approves the map as submitted by the joint applicants. We find it to encompass a region within Oregon "that is shown on a map approved by the commission and is unallocated" and approve its allocation to Eagle as an addition to the existing Richland exchange.

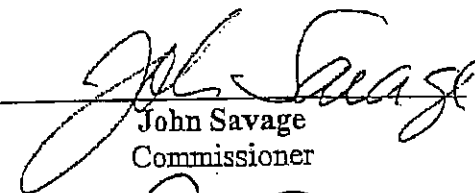
ORDER


IT IS ORDERED that:

1. The application filed by Eagle Telephone System, Inc., and Midvale Telephone Exchange, seeking the allocation of a certain local exchange telecommunications service territory, is approved;
2. The geographic area, as defined by a map filed with and approved by the Commission, is added to the existing Richland local exchange.

Made, entered, and effective AUG 02 2008


Lee Beyer
Chairman


John Savage
Commissioner


Ray Baum
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

**PUBLIC UTILITY COMMISSION OF OREGON
INTEROFFICE CORRESPONDENCE**

DATE: June 24, 2008
TO: Michael Grant, Administrative Hearings Division
FROM: Marlene Gorsuch
SUBJECT: UA 114 – APPLICATION OF EAGLE TELEPHONE SYSTEM, INC. & MIDVALE TELEPHONE EXCHANGE, INCORPORATED FOR THE UNALLOCATION, TRANSFER AND ALLOCATION OF TERRITORY

This memo is intended to provide information to the Administrative Hearings Division for processing the joint application of Eagle Telephone System, Inc. (Eagle) and Midvale Telephone Exchange, Incorporated (Midvale) for the unallocation, transfer and allocation of certain territory to be referred to as Conner Creek. This application should not be controversial and will probably not require a hearing.

Purpose for the Allocation:

The reason for this requested "unallocation" by Midvale and the allocation of the service territory to Eagle, along with the transfer of any rights in the territory from Midvale to Eagle, is that the most efficient means to provide updated facilities for the provision of basic and advanced services in the territory is through the extension of facilities of Eagle.

While Midvale was able to bring initial service to this area, the territory is difficult to serve from Midvale's existing facilities and would be very expensive to upgrade to provide advanced telecommunications services. Existing facilities are showing signs of age, and an expensive reconstruction program would need to be undertaken. The transfer and allocation will allow Eagle, with facilities in the vicinity, to extend service that will allow a broadband platform as well as basic service to be provided to the customers in the Conner Creek area. I believe this allocation and transfer is in the public interest, and is in the customers' best interests to proceed.

Support for the Allocation:

The reason for the requested "unallocation" by Midvale and the allocation of the territory to Eagle, along with the transfer of any rights in the territory from Midvale to Eagle, is that the most efficient means to provide updated facilities for the provision of basic and advanced services in the territory is through the extension of the facilities of Eagle.

Eagle is willing to provide telephone service to the Conner Creek area without charging individual customers for the construction of the new facilities on a per-customer basis. Further, Eagle will charge its existing rates to the customers in the service area.

Current rates (excluding taxes, surcharges, etc.) for Midvale customers in the Conner Creek area:

Basic Residential: \$14.80

Basic Business: \$ 22.50

Current rates (excluding taxes, surcharges, etc.) for Eagle customers in the Richland Exchange:

Basic Residential: \$11.60

Basic Business: \$ 16.90

Not only is the current service in the Conner Creek area just basic dial tone, it is not even reliable service. Customers in the Richland Exchange enjoy all of the latest upgrades and amenities in telephone service as well as broadband and cellular service.

Justification for the Allocation:

This allocation and transfer is in the public interest, because it will allow customers in the Conner Creek area to receive updated telecommunications facilities that will allow the provisioning of not only basic service, but broadband services in that part of rural Oregon.

In addition, the proposed allocation and transfer will allow conservation of number resources. Customers will be assigned numbers out of the 541-893 Eagle numbering resources. The current resources assigned to the territory of 541-675 will be returned by Midvale to the numbering administrator upon completion of the transactions contemplated by this application (a 10,000 block, which will become available for use in another portion of the 541 NPA).

Customer Notice:

Chief among the requirements under OAR 860-032-0020 is a requirement to provide customers with notice of "abandonment." In this instance, the transaction actually contemplates the transfer of the customers from one operating incumbent local

exchange carrier (Midvale) to another operating incumbent local exchange carrier (Eagle). There will be no interruption of service to customers.

All of the requirements for customer notification, except two technical aspects, have been met by the two carriers, Midvale and Eagle. The first exception pertains to naming a date that service will be abandoned in the customer notice. Since Eagle must build facilities into the Conner Creek area to provide service to that area as part of the existing Richland Exchange, they do not know an exact date. To affect a smooth transition, Eagle has agreed to provide Midvale with at least thirty (30) days notice of the cut over date. In addition, Eagle has committed to providing each customer with notice of the cut over date at the same time it provides that notice to Midvale (30 days in advance of the cut over). Eagle and Midvale have requested that this proposal be accepted in lieu of compliance with the strictest terms of OAR 860-032-0020(5)(e).

The second exception to the notice requirement pertains to providing an electronic document containing the notice in a format suitable to posting on the Commission website at the time of the initial filing. That has since been provided.

Other Notices:

Given the proposed transfer of customers and service from Midvale to Eagle with customers being provided with new numbers associated with the Richland Exchange (Eagle), there will be no loss of 911 service. Consequently, notification by the exiting provider to the Oregon Emergency Management and the appropriate enhanced 911 database provider with copies to the Incumbent local exchange carriers, the Commission and to Oregon Emergency Management authorizing the enhanced 911 database provider to allow access by other telecommunications providers to any remaining enhanced 911 database records belonging to the exiting provider after the provider has abandoned service would only cause confusion and possible misrouting of 911 calls. Eagle and Midvale's approach for this transition will ensure that 911 services are fully available on a continuous basis to the customers in the Conner Creek area.

Within six months of the cut over, Midvale will provide notice to the North American Numbering Plan Administrator and the National Administrator of the Local Exchange Routing Guide that the 541-675 NPA-NXX is no longer in use and will return that code to the Numbering Administrator, satisfying this part of the notice requirement.

In order to minimize any inconvenience to the customers in the new Conner Creek area, Midvale will establish voice mailboxes for approximately six months after the cut over of service which will contain a recording that identifies that the number has been changed to a 541-893 number, giving the complete new number

(541-893-XXXX). The recording will ask the caller to hang up and call the new number. If there is little or no traffic to the voice mailboxes prior to the expiration of the six months, Midvale will be allowed to discontinue the voice mailboxes earlier. During the time that the voice mailboxes are kept in service, Eagle will provide Midvale with notice of customer adds and drops for those customers in the Conner Creek area.

Other Requirements:

OAR 860-032-0020(7) cites several technical requirements. I believe that Eagle and Midvale have either met those requirements as outlined in the rule or provided sufficient and practical alternatives that satisfy the intent of the rule.

The Companies have provided copies of the Purchase and Sale Agreement, the Bill of Sale, Assignment of Easements and Franchises, and their notice to the affected customers. To make it easy to see at a glance how the addition of the Conner Creek area affects the Richland Exchange, I have provided a drawing depicting the current Richland Exchange with the proposed new addition of the Conner Creek area. This proposal/request is a logical and practical transaction and provides for a smooth, even seamless, transition.

In discussing the current condition of service in the Conner Creek area with Mike Lattin at Eagle Telephone, I have learned that Eagle has been responding to service calls for these customers for some time. Since Eagle has staff and equipment just an hour away, and it takes between three and four hours for service trucks to roll out of Midvale, Eagle has cheerfully been responding to calls for help. This has not only met the needs of the customers in a more efficient and timely manner, they have built a solid relationship with this potential customer base.

Eagle has also managed to provision broadband to one of the customers in Conner Creek, and the Conner Creek folks have actually developed a schedule for availing themselves of this "luxury." At the same time, Eagle brought wireless to the same customer, and the customers having this type of equipment are able to enjoy the service without going inside the residence.

Since the condition of the Midvale infrastructure has steadily declined, land line service is unreliable. Eagle has placed a cellular tower in that area to assist in providing the option of cellular service until such time as they are able to move forward with their proposal. Both Eagle and Midvale receive calls daily from Conner Creek constituents asking when this transition will take place.

UA 114 – Transfer and Allocation of Service Territory
Eagle Telephone System, Inc. and Midvale Telephone Exchange, Incorporated
June 16, 2008

ORDER NO. 08-404

Staff recommends that the Commission approve the transfer and allocation of the Conner Creek area from Midvale to Eagle's Richland Exchange.

cc: Richard A. Finnigan (via email)
Mike Lattin (via email)
Lane Williams (via email)